IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

FRIDAY, THE 24TH NOVEMBER 2006 / 3RD AGRAHAYANA 1928

Crl.Rev.Pet.No. 695 of 1999()

CRA.90/1995 of SESSIONS COURT, THALASSERY
CC.883/1993 of JUDL.MAGISTRATE OF FIRST CLASS COURT-I, KANNUR

REVN. PETITIONER: APPELLANT: ACCUSED:

SELVARAJ.A., S/O.ARUMUGHAM,
P.O.KILLIMANGALAM, WADACKANCHERY,
TRICHUR DISTRICT.

BY ADV. SRI.P.NARAYANAN

RESPONDENTS: COMPLAINANT & STATE:
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1. M/S.SOUMYA, WHOLESALE CHOTH MERCHANT,
   BELLAD ROAD, KANNUR, REPRESENTED BY ITS
   PROPRIETOR A.V.KUNJAMBU, S/O.GOVINDAN.

2. STATE OF KERALA, REPRESENTED BY
   PUBLIC PROSECUTOR, HIGH COURT OF KERALA.

R1 BY ADV. SRI.K.G.BALASUBRAMANIAN
R2 BY PUBLIC PROSECUTOR SRI.C.K.SURESH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 24/11/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.T. SANKARAN, J.

CRL.R.P.NO. 695 OF 1999

Dated this the 24th day of November,2006

O R D E R

The petitioner was convicted for the offence under Section 138 of the Negotiable Instruments Act and he was sentenced to undergo simple imprisonment for six months. The petitioner challenged the conviction and sentence in appeal. The Appellate Court confirmed the conviction and sentence and dismissed the appeal. The accused challenges the conviction and sentence in this Revision.

2. The case of the complainant is that he was conducting wholesale business in textiles under the name and style "M/s.Soumya". The accused used to purchase clothes from the complainant on credit basis. The accounts were settled and it was found that a sum of Rs.63,007/- was due from the accused. For settlement of that dues, the accused issued

Ext.P1 cheque dated 30.6.1993. On presentation of the cheque, it was dishonoured on the ground that the funds were insufficient. Though notice was issued to the accused, he did not send any reply nor did he repay the amount.

3. The accused contended that a blank cheque was issued by him as security for the business transaction between the complainant and himself. He also contended that the cheque was not issued for Rs.63,007/- as contended by the complainant. No defence evidence was adduced by the accused.

4. The trial court disbelieved the case put forward by the accused that a blank cheque was issued by him. It was held that there is nothing on record to show that a blank cheque was given by the accused as security to obtain goods on credit. The complainant stated in evidence that the cheque was issued by the accused after one month of the

transaction. The trial court, therefore, held that it cannot be said that the cheque was issued as security for the transaction. It was found by the trial court that the cheque was issued in the circumstances as spoken to by the complainant in discharge of the liability of the accused towards the complainant. The Appellate Court concurred with the view taken by the trial court.

5. I do not find any ground to interfere under Section 397 of the Code of Criminal Procedure. There is no error, illegality or impropriety in the judgments of the courts below. The materials on record conclusively show that the cheque was issued in discharge of the liability of the accused towards the complainant. No reply was sent by the accused to the notice issued by the complainant. The accused did not adduce any evidence. The accused was satisfied with the cross examination of PW1, the complainant. There is nothing in the

evidence of PW1 to show that the case put forward by the accused is probable. The courts below, according to me, were right in holding that the accused committed the offence as alleged. However, taking note of the facts and circumstances of the case and the nature of the offence and also taking note of the fact that the complaint was filed in the year 1993, I am of the view that the sentence can be reduced to imprisonment till the rising of the Court.

In the result, the Criminal Revision Petition is partly allowed. The conviction of the petitioner is confirmed. The sentence imposed on the petitioner is reduced to imprisonment till the rising of the Court. The petitioner shall pay a sum of Rs.70,000/- as compensation to the complainant under Section 357 (3) of the Code of Criminal Procedure and in default of payment of compensation, the petitioner shall undergo simple

imprisonment for a period of one month. Petitioner is granted two months' time to pay the amount of compensation.

(K.T.SANKARAN)
Judge

ahz/

K.T.SANKARAN, J.

CRL.M.C.NO. OF

O R D E R

September, 2006